

As Reported by the Senate Civil Justice Committee

131st General Assembly

Regular Session

2015-2016

Sub. S. B. No. 75

Senators Jones, Peterson

**Cosponsors: Senators Gardner, Beagle, Balderson, LaRose, Manning, Eklund,
Patton, Cafaro, Gentile, Coley, Bacon**

A BILL

To amend sections 303.21, 519.21, and 5713.30 and 1
to enact section 901.80 of the Revised Code to 2
limit the authority of a board of county 3
commissioners or board of township trustees to 4
prohibit agritourism through zoning, to apply 5
current agricultural use valuation to land used 6
for agritourism for property tax purposes, and 7
to establish immunity in a civil action for 8
agritourism providers. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 303.21, 519.21, and 5713.30 be 10
amended and section 901.80 of the Revised Code be enacted to 11
read as follows: 12

Sec. 303.21. (A) Except as otherwise provided in division 13
(B) of this section, sections 303.01 to 303.25 of the Revised 14
Code do not confer any power on any county rural zoning 15
commission, board of county commissioners, or board of zoning 16
appeals to prohibit the use of any land for agricultural 17
purposes or the construction or use of buildings or structures 18

incident to the use for agricultural purposes of the land on 19
which such buildings or structures are located, including 20
buildings or structures that are used primarily for vinting and 21
selling wine and that are located on land any part of which is 22
used for viticulture, and no zoning certificate shall be 23
required for any such building or structure. 24

(B) A county zoning resolution, or an amendment to such 25
resolution, may in any platted subdivision approved under 26
section 711.05, 711.09, or 711.10 of the Revised Code, or in any 27
area consisting of fifteen or more lots approved under section 28
711.131 of the Revised Code that are contiguous to one another, 29
or some of which are contiguous to one another and adjacent to 30
one side of a dedicated public road, and the balance of which 31
are contiguous to one another and adjacent to the opposite side 32
of the same dedicated public road regulate: 33

(1) Agriculture on lots of one acre or less; 34

(2) Buildings or structures incident to the use of land 35
for agricultural purposes on lots greater than one acre but not 36
greater than five acres by: set back building lines; height; and 37
size; 38

(3) Dairying and animal and poultry husbandry on lots 39
greater than one acre but not greater than five acres when at 40
least thirty-five per cent of the lots in the subdivision are 41
developed with at least one building, structure, or improvement 42
that is subject to real property taxation or that is subject to 43
the tax on manufactured and mobile homes under section 4503.06 44
of the Revised Code. After thirty-five per cent of the lots are 45
so developed, dairying and animal and poultry husbandry shall be 46
considered nonconforming use of land and buildings or structures 47
pursuant to section 303.19 of the Revised Code. 48

Division (B) of this section confers no power on any 49
county rural zoning commission, board of county commissioners, 50
or board of zoning appeals to regulate agriculture, buildings or 51
structures, and dairying and animal and poultry husbandry on 52
lots greater than five acres. 53

(C) Such sections confer no power on any board of county 54
commissioners, county rural zoning commission, or board of 55
zoning appeals to prohibit in a district zoned for agricultural, 56
industrial, residential, or commercial uses, the use of any land 57
for: 58

(1) A farm market where fifty per cent or more of the 59
gross income received from the market is derived from produce 60
raised on farms owned or operated by the market operator in a 61
normal crop year. However, a board of county commissioners, as 62
provided in section 303.02 of the Revised Code, may regulate 63
such factors pertaining to farm markets as size of the 64
structure, size of parking areas that may be required, set back 65
building lines, and egress or ingress, where such regulation is 66
necessary to protect the public health and safety. 67

(2) Biodiesel production, biomass energy production, or 68
electric or heat energy production if the land on which the 69
production facility is located qualifies as land devoted 70
exclusively to agricultural use under sections 5713.30 to 71
5713.37 of the Revised Code for real property tax purposes. As 72
used in division (C) (2) of this section, "biodiesel," "biomass 73
energy," and "electric or heat energy" have the same meanings as 74
in section 5713.30 of the Revised Code. 75

(3) Biologically derived methane gas production if the 76
land on which the production facility is located qualifies as 77
land devoted exclusively to agricultural use under sections 78

5713.30 to 5713.37 of the Revised Code for real property tax 79
purposes and if the facility that produces the biologically 80
derived methane gas does not produce more than seventeen million 81
sixty thousand seven hundred ten British thermal units, five 82
megawatts, or both. 83

(4) Agritourism. However, a board of county commissioners, 84
as provided in section 303.02 of the Revised Code, may regulate 85
such factors pertaining to agritourism, except farm markets as 86
described in division (C)(1) of this section, as size of a 87
structure used primarily for agritourism, size of parking areas 88
that may be required, setback building lines for structures used 89
primarily for agritourism, and egress or ingress where such 90
regulation is necessary to protect public health and safety. 91

Nothing in division (C)(4) of this section confers power 92
on a county zoning commission, board of county commissioners, or 93
board of zoning appeals to require any parking area to be 94
improved in any manner, including requirements governing 95
drainage, parking area base, parking area paving, or any other 96
improvement. 97

Nothing in division (C)(4) of this section confers power 98
on a county zoning commission, board of county commissioners, or 99
board of zoning appeals to prohibit the use of any land or the 100
construction or use of buildings or structures that are used 101
primarily for vinting and selling wine that are located on land 102
any part of which is used for viticulture as provided in 103
division (A) of this section. 104

(D)(1) As used in division (C)(3) of this section, 105
"biologically derived methane gas" has the same meaning as in 106
section 5713.30 of the Revised Code. 107

(2) As used in division (C)(4) of this section, 108
"agritourism" has the same meaning as in section 901.80 of the 109
Revised Code. 110

Sec. 519.21. (A) Except as otherwise provided in division 111
(B) of this section, sections 519.02 to 519.25 of the Revised 112
Code confer no power on any township zoning commission, board of 113
township trustees, or board of zoning appeals to prohibit the 114
use of any land for agricultural purposes or the construction or 115
use of buildings or structures incident to the use for 116
agricultural purposes of the land on which such buildings or 117
structures are located, including buildings or structures that 118
are used primarily for vinting and selling wine and that are 119
located on land any part of which is used for viticulture, and 120
no zoning certificate shall be required for any such building or 121
structure. 122

(B) A township zoning resolution, or an amendment to such 123
resolution, may in any platted subdivision approved under 124
section 711.05, 711.09, or 711.10 of the Revised Code, or in any 125
area consisting of fifteen or more lots approved under section 126
711.131 of the Revised Code that are contiguous to one another, 127
or some of which are contiguous to one another and adjacent to 128
one side of a dedicated public road, and the balance of which 129
are contiguous to one another and adjacent to the opposite side 130
of the same dedicated public road regulate: 131

(1) Agriculture on lots of one acre or less; 132

(2) Buildings or structures incident to the use of land 133
for agricultural purposes on lots greater than one acre but not 134
greater than five acres by: set back building lines; height; and 135
size; 136

(3) Dairying and animal and poultry husbandry on lots 137
greater than one acre but not greater than five acres when at 138
least thirty-five per cent of the lots in the subdivision are 139
developed with at least one building, structure, or improvement 140
that is subject to real property taxation or that is subject to 141
the tax on manufactured and mobile homes under section 4503.06 142
of the Revised Code. After thirty-five per cent of the lots are 143
so developed, dairying and animal and poultry husbandry shall be 144
considered nonconforming use of land and buildings or structures 145
pursuant to section 519.19 of the Revised Code. 146

Division (B) of this section confers no power on any 147
township zoning commission, board of township trustees, or board 148
of zoning appeals to regulate agriculture, buildings or 149
structures, and dairying and animal and poultry husbandry on 150
lots greater than five acres. 151

(C) Such sections confer no power on any township zoning 152
commission, board of township trustees, or board of zoning 153
appeals to prohibit in a district zoned for agricultural, 154
industrial, residential, or commercial uses, the use of any land 155
for: 156

(1) A farm market where fifty per cent or more of the 157
gross income received from the market is derived from produce 158
raised on farms owned or operated by the market operator in a 159
normal crop year. However, a board of township trustees, as 160
provided in section 519.02 of the Revised Code, may regulate 161
such factors pertaining to farm markets as size of the 162
structure, size of parking areas that may be required, set back 163
building lines, and egress or ingress, where such regulation is 164
necessary to protect the public health and safety. 165

(2) Biodiesel production, biomass energy production, or 166

electric or heat energy production if the land on which the 167
production facility is located qualifies as land devoted 168
exclusively to agricultural use under sections 5713.30 to 169
5713.37 of the Revised Code for real property tax purposes. As 170
used in division (C) (2) of this section, "biodiesel," "biomass 171
energy," and "electric or heat energy" have the same meanings as 172
in section 5713.30 of the Revised Code. 173

(3) Biologically derived methane gas production if the 174
land on which the production facility is located qualifies as 175
land devoted exclusively to agricultural use under sections 176
5713.30 to 5713.37 of the Revised Code for real property tax 177
purposes and if the facility that produces the biologically 178
derived methane gas does not produce more than seventeen million 179
sixty thousand seven hundred ten British thermal units, five 180
megawatts, or both. 181

(4) Agritourism. However, a board of township trustees, as 182
provided in section 519.02 of the Revised Code, may regulate 183
such factors pertaining to agritourism, except farm markets as 184
described in division (C) (1) of this section, as size of a 185
structure used primarily for agritourism, size of parking areas 186
that may be required, setback building lines for structures used 187
primarily for agritourism, and egress or ingress where such 188
regulation is necessary to protect public health and safety. 189

Nothing in division (C) (4) of this section confers power 190
on a township zoning commission, board of township trustees, or 191
board of zoning appeals to require any parking area to be 192
improved in any manner, including requirements governing 193
drainage, parking area base, parking area paving, or any other 194
improvement. 195

Nothing in division (C) (4) of this section confers power 196

on a township zoning commission, board of township trustees, or 197
board of zoning appeals to prohibit the use of any land or the 198
construction or use of buildings or structures that are used 199
primarily for vinting and selling wine that are located on land 200
any part of which is used for viticulture as provided in 201
division (A) of this section. 202

(D) (1) As used in division (C) (3) of this section, 203
"biologically derived methane gas" has the same meaning as in 204
section 5713.30 of the Revised Code. 205

(2) As used in division (C) (4) of this section, 206
"agritourism" has the same meaning as in section 901.80 of the 207
Revised Code. 208

Sec. 901.80. (A) As used in this section: 209

(1) "Agricultural production" has the same meaning as in 210
section 929.01 of the Revised Code. 211

(2) "Agritourism" means an agriculturally related 212
educational, entertainment, historical, cultural, or 213
recreational activity, including you-pick operations or farm 214
markets, conducted on a farm that allows or invites members of 215
the general public to observe, participate in, or enjoy that 216
activity. 217

(3) "Agritourism provider" means a person who owns, 218
operates, provides, or sponsors an agritourism activity or an 219
employee of such a person who engages in or provides agritourism 220
activities whether or not for a fee. 221

(4) "Farm" means land that is composed of tracts, lots, or 222
parcels totaling not less than ten acres devoted to agricultural 223
production or totaling less than ten acres devoted to 224
agricultural production if the land produces an average yearly 225

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| <u>gross income of at least twenty-five hundred dollars from</u> | 226 |
| <u>agricultural production.</u> | 227 |
| <u>(5) "Participant" means an individual, other than an</u> | 228 |
| <u>agritourism provider, who observes or participates in an</u> | 229 |
| <u>agritourism activity.</u> | 230 |
| <u>(6) "Risk inherent in an agritourism activity" means a</u> | 231 |
| <u>danger or condition that is an integral part of an agritourism</u> | 232 |
| <u>activity, including all of the following:</u> | 233 |
| <u>(a) The surface and subsurface conditions of land;</u> | 234 |
| <u>(b) The behavior or actions of wild animals not kept by or</u> | 235 |
| <u>under the control of an agritourism provider;</u> | 236 |
| <u>(c) The behavior or actions of domestic animals other than</u> | 237 |
| <u>vicious or dangerous dogs as defined in section 955.11 of the</u> | 238 |
| <u>Revised Code;</u> | 239 |
| <u>(d) The ordinary dangers associated with structures or</u> | 240 |
| <u>equipment ordinarily used in farming or ranching operations;</u> | 241 |
| <u>(e) The possibility of contracting illness resulting from</u> | 242 |
| <u>physical contact with animals, animal feed, animal waste, or</u> | 243 |
| <u>surfaces contaminated by animal waste;</u> | 244 |
| <u>(f) The possibility that a participant may act in a</u> | 245 |
| <u>negligent manner, including by failing to follow instructions</u> | 246 |
| <u>given by the agritourism provider or by failing to exercise</u> | 247 |
| <u>reasonable caution while engaging in the agritourism activity</u> | 248 |
| <u>that may contribute to injury to that participant or another</u> | 249 |
| <u>participant.</u> | 250 |
| <u>(B) In a civil action, an agritourism provider is immune</u> | 251 |
| <u>from liability for any harm a participant sustains during an</u> | 252 |
| <u>agritourism activity if the participant is harmed as a result of</u> | 253 |

a risk inherent in an agritourism activity. Nothing in this 254
section requires an agritourism provider to eliminate risks 255
inherent in agritourism activities. 256

(C) An agritourism provider is not immune from civil 257
liability for harm sustained by a participant if any of the 258
following applies: 259

(1) The agritourism provider acts with a willful or wanton 260
disregard for the safety of the participant and proximately 261
causes harm to the participant. 262

(2) The agritourism provider purposefully causes harm to 263
the participant. 264

(3) The agritourism provider's actions or inactions 265
constitute criminal conduct and cause harm to the participant. 266

(4) The agritourism provider fails to post and maintain 267
signs as required by division (D) of this section. 268

(5) The agritourism provider has actual knowledge or 269
should have actual knowledge of an existing dangerous condition 270
on the land or regarding facilities or equipment on the land 271
that is not an inherent risk and does not make the dangerous 272
condition known to the participant, and the dangerous condition 273
proximately causes injury or damage to or the death of the 274
participant. 275

(D) An agritourism provider shall post and maintain signs 276
that contain the warning notice specified in this division. The 277
provider shall place a sign in a clearly visible location at or 278
near each entrance to the agritourism location or at the site of 279
each agritourism activity. The warning notice shall consist of a 280
sign in black letters with each letter to be a minimum of one 281
inch in height. The signs shall contain the following notice of 282

warning: "WARNING: Under Ohio law, there is no liability for an 283
injury to or death of a participant in an agritourism activity 284
conducted at this agritourism location if that injury or death 285
results from the inherent risks of that agritourism activity. 286
Inherent risks of agritourism activities include, but are not 287
limited to, the risk of injury inherent to land, equipment, and 288
animals as well as the potential for you as a participant to act 289
in a negligent manner that may contribute to your injury or 290
death. You are assuming the risk of participating in this 291
agritourism activity." 292

Sec. 5713.30. As used in sections 5713.31 to 5713.37 and 293
5715.01 of the Revised Code: 294

(A) "Land devoted exclusively to agricultural use" means: 295

(1) Tracts, lots, or parcels of land totaling not less 296
than ten acres to which, during the three calendar years prior 297
to the year in which application is filed under section 5713.31 298
of the Revised Code, and through the last day of May of such 299
year, one or more of the following apply: 300

(a) The tracts, lots, or parcels of land were devoted 301
exclusively to commercial animal or poultry husbandry, 302
aquaculture, algaculture meaning the farming of algae, 303
apiculture, the production for a commercial purpose of timber, 304
field crops, tobacco, fruits, vegetables, nursery stock, 305
ornamental trees, sod, or flowers, or the growth of timber for a 306
noncommercial purpose, if the land on which the timber is grown 307
is contiguous to or part of a parcel of land under common 308
ownership that is otherwise devoted exclusively to agricultural 309
use. 310

(b) The tracts, lots, or parcels of land were devoted 311

exclusively to biodiesel production, biomass energy production, 312
electric or heat energy production, or biologically derived 313
methane gas production if the land on which the production 314
facility is located is contiguous to or part of a parcel of land 315
under common ownership that is otherwise devoted exclusively to 316
agricultural use, provided that at least fifty per cent of the 317
feedstock used in the production was derived from parcels of 318
land under common ownership or leasehold. 319

(c) The tracts, lots, or parcels of land were devoted to 320
and qualified for payments or other compensation under a land 321
retirement or conservation program under an agreement with an 322
agency of the federal government. 323

(2) Tracts, lots, or parcels of land totaling less than 324
ten acres that, during the three calendar years prior to the 325
year in which application is filed under section 5713.31 of the 326
Revised Code and through the last day of May of such year, were 327
devoted exclusively to commercial animal or poultry husbandry, 328
aquaculture, algaculture meaning the farming of algae, 329
apiculture, the production for a commercial purpose of field 330
crops, tobacco, fruits, vegetables, timber, nursery stock, 331
ornamental trees, sod, or flowers where such activities produced 332
an average yearly gross income of at least twenty-five hundred 333
dollars during such three-year period or where there is evidence 334
of an anticipated gross income of such amount from such 335
activities during the tax year in which application is made, or 336
were devoted to and qualified for payments or other compensation 337
under a land retirement or conservation program under an 338
agreement with an agency of the federal government; 339

(3) A tract, lot, or parcel of land taxed under sections 340
5713.22 to 5713.26 of the Revised Code is not land devoted 341

exclusively to agricultural use~~r~~. 342

(4) Tracts, lots, or parcels of land, or portions thereof 343
that, during the previous three consecutive calendar years have 344
been designated as land devoted exclusively to agricultural use, 345
but such land has been lying idle or fallow for up to one year 346
and no action has occurred to such land that is either 347
inconsistent with the return of it to agricultural production or 348
converts the land devoted exclusively to agricultural use as 349
defined in this section. Such land shall remain designated as 350
land devoted exclusively to agricultural use provided that 351
beyond one year, but less than three years, the landowner proves 352
good cause as determined by the board of revision. 353

"Land devoted exclusively to agricultural use" includes 354
tracts, lots, or parcels of land or portions thereof that are 355
used for conservation practices, provided that the tracts, lots, 356
or parcels of land or portions thereof comprise twenty-five per 357
cent or less of the total of the tracts, lots, or parcels of 358
land that satisfy the criteria established in division (A) (1), 359
(2), or (4) of this section together with the tracts, lots, or 360
parcels of land or portions thereof that are used for 361
conservation practices. 362

Notwithstanding any other provision of law to the 363
contrary, the existence of agritourism on a tract, lot, or 364
parcel of land that otherwise meets the definition of "land 365
devoted exclusively to agricultural use" as defined in this 366
division does not disqualify that tract, lot, or parcel from 367
valuation under sections 5713.30 to 5713.37 and 5715.01 of the 368
Revised Code. 369

(B) "Conversion of land devoted exclusively to 370
agricultural use" means any of the following: 371

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| (1) The failure of the owner of land devoted exclusively | 372 |
| to agricultural use during the next preceding calendar year to | 373 |
| file a renewal application under section 5713.31 of the Revised | 374 |
| Code without good cause as determined by the board of revision; | 375 |
| (2) The failure of the new owner of such land to file an | 376 |
| initial application under that section without good cause as | 377 |
| determined by the board of revision; | 378 |
| (3) The failure of such land or portion thereof to qualify | 379 |
| as land devoted exclusively to agricultural use for the current | 380 |
| calendar year as requested by an application filed under such | 381 |
| section; | 382 |
| (4) The failure of the owner of the land described in | 383 |
| division (A) (4) of this section to act on such land in a manner | 384 |
| that is consistent with the return of the land to agricultural | 385 |
| production after three years. | 386 |
| The construction or installation of an energy facility, as | 387 |
| defined in section 5727.01 of the Revised Code, on a portion of | 388 |
| a tract, lot, or parcel of land devoted exclusively to | 389 |
| agricultural use shall not cause the remaining portion of the | 390 |
| tract, lot, or parcel to be regarded as a conversion of land | 391 |
| devoted exclusively to agricultural use if the remaining portion | 392 |
| of the tract, lot, or parcel continues to be devoted exclusively | 393 |
| to agricultural use. | 394 |
| (C) "Tax savings" means the difference between the dollar | 395 |
| amount of real property taxes levied in any year on land valued | 396 |
| and assessed in accordance with its current agricultural use | 397 |
| value and the dollar amount of real property taxes that would | 398 |
| have been levied upon such land if it had been valued and | 399 |
| assessed for such year in accordance with Section 2 of Article | 400 |

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| XII, Ohio Constitution. | 401 |
| (D) "Owner" includes, but is not limited to, any person | 402 |
| owning a fee simple, fee tail, or life estate or a buyer on a | 403 |
| land installment contract. | 404 |
| (E) "Conservation practices" are practices used to abate | 405 |
| soil erosion as required in the management of the farming | 406 |
| operation, and include, but are not limited to, the | 407 |
| installation, construction, development, planting, or use of | 408 |
| grass waterways, terraces, diversions, filter strips, field | 409 |
| borders, windbreaks, riparian buffers, wetlands, ponds, and | 410 |
| cover crops for that purpose. | 411 |
| (F) "Wetlands" has the same meaning as in section 6111.02 | 412 |
| of the Revised Code. | 413 |
| (G) "Biodiesel" means a mono-alkyl ester combustible | 414 |
| liquid fuel that is derived from vegetable oils or animal fats | 415 |
| or any combination of those reagents and that meets the American | 416 |
| society for testing and materials specification D6751-03a for | 417 |
| biodiesel fuel (B100) blend stock distillate fuels. | 418 |
| (H) "Biologically derived methane gas" means gas from the | 419 |
| anaerobic digestion of organic materials, including animal waste | 420 |
| and agricultural crops and residues. | 421 |
| (I) "Biomass energy" means energy that is produced from | 422 |
| organic material derived from plants or animals and available on | 423 |
| a renewable basis, including, but not limited to, agricultural | 424 |
| crops, tree crops, crop by-products, and residues. | 425 |
| (J) "Electric or heat energy" means electric or heat | 426 |
| energy generated from manure, cornstalks, soybean waste, or | 427 |
| other agricultural feedstocks. | 428 |

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| <u>(K) "Agritourism" has the same meaning as in section</u> | 429 |
| <u>901.80 of the Revised Code.</u> | 430 |
| Section 2. That existing sections 303.21, 519.21, and | 431 |
| 5713.30 of the Revised Code are hereby repealed. | 432 |